

## REMARKS

### I. Summary of Rejections

Claims 1-20 are pending in the application. Claims 8-13 were withdrawn from further consideration pursuant to 37 CFR 1.142.(b) as being drawn to a non-elected species, there being no allowable generic or linking claim.

Claims 1-7 and 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5, 18 and 20 are rejected under 35 U.S. C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1, 6 and 15-18 are rejected under 35 U.S. C. 102(b) as being clearly anticipated by Garby et al.

Claims 1-2, 5-6 and 15-19 are rejected under 35 U.S. C. 102(b) as being clearly anticipated by Leu.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garby et al in view of Borodulin.

Claim 14 is rejected under 35 U.S.C. 103(1) as being unpatentable over Garby et al or Fiocchi ('021 or '227) in view of Schulze.

Applicant has canceled claims 1-17, amended claims 18-20 and added new claims 21-22. Applicant respectfully requests reconsideration of the claims as amended. Applicant submits that the amended claims place the application in condition for allowance for at least the following reasons.

**II. Applicant has amended the claims to overcome the rejections under 35 U.S.C. § 112, first and second paragraphs, as well as those under 102(b) and 103(a).**

**A. Rejections under 35 U.S.C. § 112, first paragraph**

The Patent Office rejected claims 5, 18 and 20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant has canceled claim 5, so the following remarks address the rejection as applied to claims 18 and 20.

The Patent Office found that the language in claims 18 and 20, the Patent Office found that the claim language requiring that “the first piercing tool is adapted for piercing, tearing and cutting” to be unsupported by the original disclosure. Applicant disagrees and respectfully refers the Examiner to page 5, lines 18-23, of the original specification which reads as follows:

Referring now to Figs. 1, 6, and 7, the outwardly extending member 30 may also support a piercing tool 36. The piercing tool 36 may include a flat body portion 37 that culminates in a pointed edge 39. As illustrated in Fig. 7, the pointed edge 39 may be used to score or create an opening in the backing of containers such as but not limited to blister packs, foil packs, corrugated boxes or containers or to pierce materials such as packing tape or other similar materials.

This discussion clearly provides support for a tool for piercing, tearing and cutting. However, in an effort to move the application forward, Applicant has amended the claims to require the piercing tool to provide piercing and cutting. Applicant respectfully requests withdrawal of the rejection of claims 18 and 20 under 35 U.S.C. § 112, first paragraph.

**B. Rejections under 35 U.S.C. § 112, second paragraph**

The Patent Office also rejected claims 1-7 and 14-20 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has canceled claims 1-7 and 14-17; thus, the following remarks address claims 18-20.

With respect to claims 18-20, the Patent Office stated that the “disclosure lacks support for ‘tearing,’” as defined by the original claim. Although Applicant believes that the specification at page 5, lines 18-23, provides support for “tearing” as a claim limitation, in an effort to move the application forward Applicant has amended claims 18 and 20, deleting tearing as limitation.

The Patent Office also determined that the term “template” as used in original claims 18-20 was indefinite “because the device does not define a ‘gauge or pattern’ as is known in the template art.” Applicant respectfully refers the Examiner to Figs. 1 and 4, wherein a pattern of variously sized pockets are clearly illustrated and to page 3 of the original disclosure, which states:

As shown in Fig. 2, the pockets 20 may be configured in a *variety of shapes*. As shown in Fig. 2, a pocket 20 may be used by placing the back portion 3 of a pill container 4 such as a blister pack over the opening of the pocket 20, ideally the foil backing of the container 4 will have been scored or pierced prior to placing the foil backing over the pocket 20. As best illustrated in Fig. 2, the application of an appropriate pressure to the front surface of the pill container 4 causes a pill 5 to fall from the pill container 4 and into the pocket 20.

The template 18 may also include a pill splitter 22, as best seen in Figs. 3 and 4. The pill splitter 22 may be integrally formed with the body 12 and may include a pocket 24 that is divided into two compartments by an upwardly extending wall 26. The wall 26 defines a pointed upper edge portion 28.

While Applicant disagrees with the Patent Office regarding the use of the term “template” to define the size and configuration of the pockets defined by the body, Applicant has

amended the claims, deleting the term template and now requiring “two or more variously sized pockets.” Support for this amendment is found in the original disclosure. For example, the original specification teaches that “a template 18 defines one or more variously sized pockets 20” (Original Specification at page 4, lines 17-18). Fig. 4 specifically points out the template 18 and the sub-elements 20 comprising the template. Fig. 2 shows a pocket 20 of the template 18 receiving a pill.

In view of the amendments to the claims and the arguments set forth herein, Applicant respectfully requests withdrawal of the rejection of claims 18-20 under 35 U.S.C. § 112, second paragraph.

**C. Rejections under 35 U.S.C. § 102(b)**

The Patent Office rejected claims 1, 6 and 15-18 under 35 U.S.C. § 102(b) as being clearly anticipated by U.S. Pat. No. 5,313,859 issued to Garby et al. (hereinafter “Garby”), U.S. Pat. No. 4,918,775 issued to Leu (hereinafter “Leu”), and U.S. Patent No. 5,621,936 issued to Penaligon et al. (hereinafter “Penaligon”). Since Applicant has canceled claims 1, 6 and 15-17, the following arguments address the rejection as applied to claims 18.

Garby et al. teaches --

A device for removing a child resistant closure from a container, including a tab to receive the protrusion of a closure of the line-up-the-arrows type, a recess to receive the closure adjacent the tab, an inclined side of the recess to bear against the closure and maintain the tab in engagement with the protrusion, and an end of the device opposite the tab to receive a force.

(See Abstract). There is no teaching or suggestion in Garby of a body comprising two or more variously sized pockets as required by the amended claims.

Leu teaches a “portable safety device for outdoor use.” Leu does not teach or suggest a body that includes two or more variously sized pockets.

Penaligon teaches a utensil to be held by a user and manipulated by the user's hand to operate on a work piece. While Penaligon discloses a number of implements associated with the disclosed utensil, the specification does not teach or suggest a body including two or more variously sized pockets as defined by the amended claims.

Applicant respectfully submits that the claims as amended are not anticipated by Garby, Leu or Penaligon. None of these references teach or suggest a container opener including two or more variously sized and shaped pockets or a pill splitting tool formed as part of the body structure. For these reasons, Applicant requests withdrawal of the rejection under 35 U.S.C. § 102(b).

**D. Rejections under 35 U.S.C. § 103(a)**

The Patent Office rejected claims 4 and 7 under 35 U.S.C. § 103(a). Applicant cancelled these claims. Thus, no argument is deemed necessary.

**III. Conclusion**

For the foregoing reasons, the claims are in condition for allowance, and Applicant respectfully requests withdrawal of the rejection of the claims under 35 U.S.C. §§ 112, first and second paragraphs, 102(b) and 103(a).

Enclosed is the fee for a three-month extension of time, which we believe to be due with the filing of this response. However, if any other fees are required in connection with the filing of this paper that are not identified in this response or any accompanying transmittal, the Commissioner of Patents is authorized to charge the fee due, including any fees due for an extension of time, to Deposit Account Number 190011 in the name of Sachnoff & Weaver, Ltd.

The Examiner is invited to direct any questions to the undersigned attorney.

Respectfully submitted,

SACHNOFF & WEAVER, LTD.

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